مبدأ عدم تجزئة مدفوعات الحساب الجاري

The Principle of the Indivisibility of the Current Account Entries

إعداد

محمود حسين القيام

إشراف الدكتور

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مبدأ عدم تجزئة مدفوعات الحساب الجاري

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أستاذ، جامعة جرش الاهلية

تاريخ مناقشة الرسالة

2013/ 11/ 28

الاهداء

الى من تعب من اجلي وكان عونا لي في توفير كل سبل الراحة.....والدي العزيز

الى من غمرتني بحنانها الدافئ ودعائها الصادق......والدتي الغالية

الى رفيقة دربي التي طالما حلمت ان اصل الى هذه المرحلة وكانت مثالا للتضحية ....زوجتي

الى فلذة كبدي ولدي جواد..والى أنوار حياتي ..بناتي اسلام ويقين وسدين وجود

الى كل من ساندني.. طوال فترة دراستي ولقيت منهم كل الدعم والتشجيع

اهدي هذا الجهد المتواضع

الباحث

شكر وتقدير

فهرس المحتويات

[illegible]	[illegible]

[illegible]: الاثار المترتبة على مبدأ عدم تجزئة مدفوعات الحساب الجاري والاستثناءات الواردة عليه

- 1 .93 2003

- 2 .152

.1

. 2

الفصل الأول

مفهوم عدم تجزئة الحساب الجاري

المبحث الأول

مفهوم عدم التجزئة في النظرية التقليدية

(1).

(2).

3

-1 . 83

-2

. 98 1979

-3

.519 1993

[illegible] [1]

[illegible] [2]

[illegible] (3)

[illegible]

-1 [illegible] 131.

-2 [illegible] 131.

-3 [illegible] 319، 320 [illegible] 136.

[illegible]

1- [illegible] 1986 [illegible] 139.

2- [illegible] 289 [illegible] 31 [illegible] 1968/1/25 [illegible] 19 [illegible] 116 [illegible] 512.

3- [illegible] 2006 [illegible] 158.

(1)

(2)

-1 19 1969 228

-2 101

[illegible]

[illegible] 300 [illegible] (1)

[illegible]

[illegible] 70 [illegible] (2) [illegible]

[illegible] .1: [illegible]

[illegible] .2 [illegible]

[illegible]

[illegible]

[illegible] 1160 [illegible]

[illegible]

[illegible]

[illegible] (1160) [illegible]

-1 [illegible] 300 [illegible]

-2 [illegible] 1932/3/9

1160

(1)

1926

(2)

1 - 2004/1527 2004/10/21

1. Mater (A),coumte courant, variation de jurisp.et doctrine,Rev.dr.Ban,1932,pp,329 .

et s. .75

[1] [illegible] 1992 [illegible] .602

.[1]

[2]

1- . 17 1999 2001 442.

2- . 160

المبحث الثاني

مبدأ عدم تجزئة الحساب الجاري والأثر التجديدي للحساب الجاري

[illegible]

121 . [illegible] - [1]

1- .402

2- .190

3- 1988 .195

[illegible] 395 [illegible]

[illegible] (Orleans) [illegible] [1]

[illegible] [2]

[illegible] [3]

1- [illegible] 2/55 [illegible] 1847/9/14 [illegible] .56 [illegible]

2- [illegible] (1854-1-769) [illegible] .56 [illegible]

3- [illegible] 2002/1599 [illegible] 2002/9/26 [illegible]

1- ... .114

2- ... .120

.407 ... 1962 ... -1

.178 ... 1988 ... -2

.246 ...

.206 ...

الفصل الثاني

الاثار المترتبة على مبدأ عدم تجزئة مدفوعات الحساب الجاري والاستثناءات الواردة عليه

[illegible] [1]

[illegible] [2]

[illegible]

1- [illegible] 2002 [illegible] 57.

2- [illegible] 106 [illegible] 361 [illegible] 217 [illegible] 368 [illegible] 298 [illegible] 393 [illegible] 129 [illegible].

[illegible]

[illegible]

[illegible] [1]

[illegible]

[illegible]

[illegible]

1- [illegible] .634

المبحث الأول

الاثار المترتبة على مبدأ عدم تجزئة الحساب الجاري

[illegible]

[illegible]

[illegible] 112 [illegible]

-1 [illegible] .326

[illegible]

[1] - [illegible] 95.

[2] - [illegible] 637.

[3] - [illegible] 349.

ĭ ƧǴùŋ ƔǴʅ ùơ þĂùŋĂ Ŧù!Ǵơ Ŏù5 ŃùǈǬ Ńùŏ5 ǴǴŋ ŦŏpƒƧƶ!ƒ ɾŏŏǳǩ!ƒ Ŧǳǂơǳ! ƧƒƧp Ŏ5Ă

þùƶǬ Ŧùǖ!ǴƱǳ!ƒ ǇĂù ǂǩ Ǵùǳǈǵ Ă ƔǴʅ ùơ!ƒ Ŏ5 ŦǐƤƒþ!ƒ ǷǳǨ!ƒ ƘƒþƧ5ǳǬ Ŧǖ!ǴƱǳ!ƒ ɾĂŋŏ Ŭ Ǉŏǈǻƒ Ǉŏǖ

(1).ŎǴǌǈ!ƒ þŏ Ʈ Ƨ!ƒ ƧĂǌƲĂ ŎǈĂǈǴǀ!ƒ Ǉŏ5ƧƱ!ƒ ƴ ư Ă Ǉŏŏƶǩ Ă ĭ ƧǴŋ!ƒ ƔǴʅ ơ!ƒ ǷǴǩǩƤƒ

Ÿƒ þǖƵ ǇǴƱǐʅ .þ Ńŏ!ƒ ƧǴƬƒ 1966/8/3 Ŏ5 1965 ŦŏpĂlơ/1132 ǷpƧǳ!ƒ ŦŏpƒƧƶ!ƒ ɾŏŏǳǩ!ƒ Ŧǳǂơǳ ƧƒƧp -1

ÜŦǈƧǴǀǳ Ŧʅ ƒƧþ Ü ĭ þǈǩʅ ǳ!ƒ þǴǳǩƵŬƒĂ ĭ ƧǴŋ!ƒ ƔǴʅ ơ!ƒ Ǐ ǐƵ ƾŏǖƱǩ!ƒ Ɣŋƒ Ă!ƒ ǇĂǈǴǀ!ƒ Ü ĭ ƧƒĂơ!ƒ þĂǳơǳ

.69 ƒ Ü2010 Ü ƾ Ƭǳþ ÜŦŏpĂlơ!ƒ Ŏǖǐơ!ƒ ƘƒƧĂƬǈǳ

[illegible]

[illegible] [1] [illegible]

[illegible] [2] [illegible]

[illegible]

[illegible] 237 [illegible] [3] [illegible]

[illegible]

1- [illegible] 1991 [illegible] 90.

2- [illegible] 90 .

3- [illegible] (238) [illegible] 263 [illegible] .

(1)

(2)

-1 ... 581.

-2 ... 135.

Ǐù!ĂŮſ ǈĵǩƧù!5!ſ ƒ ǉùƅ ǕùďƵĂ ǋùǉďƅ (1) ƚùŏǉƥƧŬſ ƨùŏŏďǩ!ſ ƚď ǂơď ƘƯƥ ǁ!Ʀƅ Ă

ƥùơǇ ƥùƶŏ Ů ǋùǉǊ5 1966 ƚǉǙù! 12 ǇùƥƧ ǀƧǴùƞǩ!ſ ǈĂǉǴùƥ ǈùď 112 ǀƥǴď!ſ ǈď ƚŏǉǴƛ!ſĂ

ſƦùǊ ƻǴù!ŏſ ǈǇ Ʀǫ Ü ĭ ƧǴùƞ!ſ ƔǴǙùơ!ſ ǇǴùǩƤ ýùƅƥ ƧùƤŬſ ƾùŏƧ5! ǴǉŏƥďĂǇ ǴǉƑſƥ ǈŏ5ƧƱ!ſ

ǋùǉƵ ǡƬùǉŏ ĭƦù!ſ ĂùǊĂ ǈŏ5ƧùƱ!ſ ǈŏƅ ƚŏǉĂǉǴ!!ſ ƘǴƥŭƶ!ſ ƚ!Ǵơ ƥƥơŏ ĭƦ!ſ ǉƥơĂ ĂǊ ƔǴǙơ!ſ

ǈŏùƶŏ ĭƦù!ſ ĂùǊĂ ƻǕǩùǙſĂ ƻ!ǙùǩǈùďƔǴǙùơ!ſ ƥĂǉƅ ƴŏďƞƅ ƚŏƵǴďƞŬſ ƚƬǴ!ď!ſ ǴďǩƠ

.ǈŏƥď!ſĂ ǈƑſƥ!ſ

ƔǴǙùơ ƥĂùƞĂ ƚù!Ǵơ Ŏù5 " Ǵùǌ!Ă!ƅ ƚùŏƥſƧƶ!ſ ƨŏŏďǩ!ſ ƚď ǂơď ǁ!Ʀƅ ǴƯŏǇ ƘƯƥ ƥƥĂ

ǈĂùǂǩ ǴùďǉǫĂ ƔǴǙùơ!ſ Ŏù5 ƚù!Ƥſƥ!ſ ǇďƦù!ſ ƘſƥƧ5ďƅ ƚƅ!ǴƱď!ſ ƨĂƞŏ Ů ǋǉǊ5 ǈŏǉƛſ ǈŏƅ ƧǴƞ

ƥŏùƬƧ!ſ ƧĂùǌǓĂ ŎǉĂǉǴù!!ſ ǈŏ5ƧùƱ!ſ ƴùƯĂ ǈŏùŏƶǩĂ ĭƧǴƞ!ſ ƔǴǙơ!ſ ǇǴǩǩƤſ ƥƶƅ ƚƅ!ǴƱď!ſ

(2) " ŎƑǴǌǉ!ſ

ƘǴùƅƱ!ſĂ ǇďƦù!ſ ƘſƥƧù5ď " ǈďùƅ ƘƯùƥ ƚùŏƥſƧƶ!ſ ƨŏŏďǩ!ſ ƚď ǂơď! ƧƤſ ƧſƧƥ Ŏ5Ă

ýùƅƥ Ǵǉŏƥùď Ăſ ǴùǉƑſƥ ǈŏ5ƧùƱ!ſ ǈùď ĭǇ ƥƶŏ ǕŎ5 ƚƑƨƞǩ!ſ ýƅ!ǩ Ů ĭƧǴƞ!ſ ƔǴǙơ!ſ Ŏ5 ǀƥŏ!ď!ſ

(3) " ŎƶƱ!!ſ ƔǴǙơ! Ǵ!5Ă ǈŏ5ƧƱ! ŎǉĂǉǴ!!ſ ƴƯĂ!ſ ǈŏŏƶǩĂ ƔǴǙơ!ſ ƾƩ

ƚùď ǂơď ƘƯùƥ ƥù!5 Ü ƘŬǴùơ!ſ ǉƦùǊ ýùƛď Ŏù5 ƧùǓǉ! ĭƧƬď!ſ ǇǴƯ!!ſ ƯƧƶǩ ƥƥĂ

ƚùƅǴƥ Ƨùŏƨ ƧùƬǴǉƶ!ſ ƚǂùǙǴďǩď ǀƥùơĂ ƧùƅǩƶŏĭƧǴùƞ!ſ ƔǴǙùơ!ſ ǈſ " ƚŏƑſƥǩƅŬſ ǀƧǊǴ!!ſ

-1 ƨŏŏďǩ 89/1068 ǇƥƧ ƾĂ!ơ ƨŏŏďǩ ƚ!ƞď ƚƅǴ!ǉ!ſ ƚǉǙ! Ü1991 ƧſƥƧſƬ!ƾ ƚƵǴƅƱ! ƚǉ!ǉſĂ ÜƧƬǉ!ſ ƒ Ü1333 ǉƧǂƦ .ƥ

ƥƅƵ ƧƥǴ!!ſ ƧŏƱƶ!ſ Ü ƴƞƧď!ſ ÜƾƅǴǙ!ſ ƒ 521.

-2 ƨŏŏďǩ /1132 ƚŏƥĂ!ơ / 1965 Ŏ5 1966/8/3 ǇǴƯƥ ǂơď ƨŏŏďǩ ƧſƧƶ!ſ ǈ ƥǉƞď!ſ ŎǉǴƛ!ſ (ƘſƧſƧ!!ſ

ǀƧƥǴƬ!ſ ƚǉǙ 1966-1967) Ü ƒ 1569-157 ƦƧǂƦ .ƥ ƾƑǴ5 ÜƔǴďƬ!ſ ƔǴǙơ!ſ Ŏ5ƧƬď!ſ Ü ƴƞƧď!ſ

ƾƅǴǙ!ſ Ü ƒ 123.

-3 ƨŏŏďǩ ǈ /41 ƚƑŏǊ 1978/7/22 Ŏ5 ƚďǴƵ . ƚǉ!ƞď ǇǴǂơŬſ ƚŏ!ƥƶ!ſ / ƥƥƶ!ſ / ƚ!Ǵƛ!ſ / ƚǉǙ!ſ ƚƶǙǴǩ!ſ (1978)

ƒ 88 ƦƧǂƦ .ƥ ƾƑǴ5 ƔǴďƬ!ſ Ü ƔǴǙơ!ſ ŎŎ5ƧƬď!ſ ƴƞƧď!ſ ƾƅǴǙ!ſ ƒ 124 .

[illegible] [1]

[illegible]

(Bordeaux) [illegible]

[illegible] [2]

[illegible]

1- [illegible] 1961/5/11 [illegible] 1106 [illegible] 322.

[illegible] 139.

2- 1851/1/23 - [illegible] - 1851-135 [illegible] 2003 [illegible] 65.

-1 93 /1045 ... 833 ... 1995

.103 ...

187 ... 2003 ...

-2 ... .162

[illegible] (1)

[illegible] (2)

[illegible] (3)

-1 [illegible] .227

-2 [illegible] .324

-3 [illegible] . 128

Paris [1]

[2]

[3]

-1 1892/2/94 1891/11/30 130

-2 1898/1/213 1898/1/17 130

-3 75.

المبحث الثاني

الاستثناءات الوارده على مبدأ عدم التجزئه في الحساب الجاري

[illegible]

[illegible]

[illegible] (113) [illegible]

[illegible] 4/399 [illegible]

1- [illegible] 1978 [illegible] 324

2. [illegible] [1]

3. [illegible] [3] [illegible] [2]

[illegible]

1- [illegible] 1953 [illegible] (457,458) [illegible] .142

2- [illegible] (132-131).

3- [illegible] .333-332 [illegible] .111

1- ... .143

[illegible] [1] [illegible]

[illegible]

[illegible] [2] [illegible]

[illegible] [3] [illegible]

[illegible] [4] [illegible]

1- [illegible] 17 [illegible] 1999 [illegible] .357

2- [illegible] .236

3- [illegible] .117,116

4- [illegible] 1161 /1/ 7/ 1965 [illegible] 216 [illegible] 20 [illegible] .146

[illegible] 1973 [illegible]

.121 [illegible]

[illegible] (bare terre) [illegible]

[illegible] [1]

[illegible] [2]

[illegible]

[illegible] [3]

1- [illegible] .347

2- [illegible] .348

3- [illegible] .274

-1 79/115 1979/7/31
.1980

[illegible]

[illegible]

[illegible]

1- (1/2/336) ... 12 ... 1996 .

2- ... 170 .

[illegible]

1- [illegible] 180.

2- [illegible] 1961/1/31 [illegible] 60-24- [illegible] 756 [illegible] 180.

3- [illegible] 522 .

-1 ... 297 ، 296.

-2 ... (1/2/336) ... 12 ... 1996 .

-3 ... 15 ... 1940 ... 1940 ... 1942 ... -93 ...

... 17 ... 1999 ...

... 2002 ... 293 .

[illegible]

.174 - [1]

.182 - [2]

(1)

(2)

1- .629

2- .489

[illegible]

[illegible]

1. [illegible]

2. [illegible]

3. [illegible] 106 [illegible]

4. [illegible]

5. [illegible]

.11 [illegible]

.12 [illegible]

.13 [illegible]

.14 [illegible]

.15 [illegible]

[illegible]

[illegible]

1. [illegible]
2. [illegible]
3. [illegible]
4. [illegible]
5. [illegible]
6. [illegible]

[illegible]

أولا: المراجع الفقهية:

1- [illegible] 1996.

2- [illegible] 1979.

3- [illegible] 2003.

4- [illegible] 1968.

5- [illegible] 1999.

6- [illegible] 1980.

7- [illegible] 1953.

8- [illegible] 1962.

9- [illegible] 1974.

10- [illegible] 2010.

11- [illegible]

12- [illegible] 1987.

13- [illegible] ([illegible]) [illegible] 1994.

14- [illegible] 1 [illegible] 2003.

15- [illegible] ([illegible]) [illegible] 2006.

16- [illegible] ([illegible]) [illegible] 1 [illegible] 1983.

17- [illegible] 2010.

18- [illegible] 1988.

19- [illegible] 1986.

20- [illegible] 1978.

21- [illegible] 1 [illegible] 2011.

22- [illegible] 1992.

-23 [illegible] .1958 [illegible]

-24 [illegible] .2005 [illegible]

-25 [illegible] .2010 [illegible]

-26 [illegible] .1993 [illegible]

-27 [illegible] .1991 [illegible]

-28 [illegible] .2010 [illegible]

-29 [illegible] 17 [illegible] 1999 [illegible] .2001 [illegible]

-30 [illegible]

-31 [illegible] .1991 [illegible]

-32 [illegible] 27 [illegible] 1999 [illegible] .2001 [illegible]

-33 ǑǁƵ ýǴďǌ ǈŏƥ!ƒ ƯǍƵ Ü ƘǴŏǁďƵ ǁǍǉǐ!ƒ ǈǰď ŀǌǌǍ!ƒ ŀŏǉǍǉǴǀ!ƒ Ǒ5 ǈǍǉǴƥ ǀƧǴǌǨ!ƒ ƥŏƥǌ!ƒ

.2000 ŀǉ̃ ǕǀƧǋǴǀ!ƒ Ü ŀưǌǉ!ƒ Ƨƒƥ Ü3 Ʊ Ü ŀŏǐƧƶ!ƒ ƥǖǐ!ƒ ƘǴƶŏƧƬǨǍ

-34 ǑǁƵ ýǴďǌ ǈŏƥ!ƒ ƯǍƵ ƥǍďơďǍ ƧŏďƖ ƧǍǴƥƧƬ!ƒ ǕǏǍǴǀ!ƒ ǉƧǴǌǨ!ƒ Ï Ü Ƨƒƥ ŀưǌǉ!ƒ

.ǀƧǋǴǀ!ƒ ǕŀŏǐƧƶ!ƒ

-35 ǑǁƵ ýǴďǌ ǈŏƥ!ƒ ƯǍƵ Ü ƘǴŏǁďƵ ǁǍǉǐ!ƒ ǈǰď ŀǌǌǍ!ƒ ǕŀŏǉǍǉǴǀ!ƒ ŀǐǨǂď ŀưǌǉ!ƒ ǕŀŏǐƧƶ!ƒ

.1988 ǕǀƧǋǴǀ!ƒ ǕǑƶďǴǌ!ƒ ƔǴǨǂ!ƒǍ ǀƧǋǴǀ!ƒ ŀƶďǴǌ ŀƶǐƱď

-36 ʂƑǴ5 ǕƳǴďƬ!ƒ ƘǴǐǴơ!ƒ ŀŏ5ƧƬď!ƒ ǕŀƵǍďǌď ƘƒƧưǴơď ƘŏǀƒƵ ǏǁƵ ŀǐǁƱ ƥƒǨǂƥ!ƒ ǀƒƧǍǨǂƥ!ƒ Ü

.ƥƒƥƶǐ ŀƶďǴǌ 2003 Ǎ 2002 ŀǉ̃

-37 ʂƑǴ5 ƥǍďơď ǕƳǴďƬ!ƒ ƔǴ̃ơ!ƒ ǑƿƧƬď!ƒ (ƥƧƒ) ŀ̃ƒƧƥ ŀŏǉǍǉǴƥ ŀǉƧǴǀď (ǕŀǉƧǴǀď Ƨƒƥ!ƒ ŀŏďǁƶ!ƒ ƥ!ǍƥǍ!ƒ

.2003 ǕǏ!ǍǕƒ ŀƶǐƱ!ƒ ǕǈǴďƵ ǕƴŏƶǍǨ!ƒǍ ƧƬǉ! ŀ5Ǵǀ!ƒ ƧƒƥǍ ƴŏƶǍǨ!ƒǍ ƧƬǉ!

-38 ƽŏƽƬ ǈ̃ơď . ƶǌǍď!ƒ Ǒ5 ǈǍǉǴǀ!ƒ ǉƧǴǌǨ!ƒ . ǕǀƧǋǴǀ!ƒ .1968

-39 ƥďơď ƽŏƽǍǨ ƥǐƵ ƟǴǨ5!ƒ ƟǴƱǐ Ü ƧǴǍƈ ƔǴ̃ơ!ƒ ƧǴǌ!ƒ Ǒ5 ƘǴŏǁďƶ!ƒ ŀŏ5ƧƬď!ƒ . Ʊ 1 .

.2004 ǈǴďƵ Ü ƴŏƶǍǨ!ƒǍ ƧƬǉ! ƽƒǍƧ!ƒ

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Abstract

The principle of the indivisibility of current account entries is the most important effects of the current account, and the rules that govern the legal system of the current account, and this principle with the base effect regenerative payments that register in the account consist the general framework of the account in terms of identifying the advantages and importance of current account, both for the parties to the account and who are associated with the account indirectly.

The Jordanian legislator systems regulate the provisions of the current account, including the principle of the indivisibility of current account entries in the articles (106 | 114) of the Trade Act No. 12 of 1966, noting the concept of this principle and its implications

However, this principle has been the subject of controversy among scholars of law, judicial rulings, and some trade legislation between its introduction in absolute terms, and sometimes abandoned the principle for the benefit of the parties of the account.

In light of this, the study has focused on the principle of the indivisibility of payments current account as the impact of the effects of the current account , in addition to its relationship to effect regenerative for the account , and this study has also dealt with exceptions contained on this principle, explaining that through the presentation of doctrine raised around between supporters and opponents , with reference to some court rulings that dealt with this principle , trying to reconcile the different directions , and trying on the light of this study come up with some recommendations through a comparative legal study .